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MEMORIAL

K. Scotland, Royal Boroughs of

FOR

The Burgeſſes and Inhabitants of the Royal Boroughs of Scotland, aſſociated for the purpoſe of correcting the Abuſes, and ſupplying the Defects in the Internal Government of theſe Boroughs.

BRITISH MUSEUM

HUMBLY SUBMITTED TO THE CONSIDERATION OF THE LEGISLATURE.

THE origin of the Royal Boroughs it is here unneceſſary to trace. Neither is it of any conſequence to enquire at what period of time they came firſt to form a part of the Legiſlature. That their origin and legiſlative capacities are to be referred to very early periods, cannot be diſputed. †

One great object of the inſtitution of Royal Boroughs was the introduction and extenſion of Commerce and Manufactures. To excite that ſpirit of activity and induſtry ſo eſſential to the ends of their eſtabliſhment, the original frame of their Internal Government appears to have been admirably adapted. That the antient conſtitutions of the Royal Boroughs of Scotland poſſeſſed a very high degree of freedom, is aſcertained by inconteſtible evidence. The whole Magiſtrates, ſuch as the Mayors, otherwiſe called Provoſts, and the Bailies, otherwiſe called Aldermen, and alſo the Town Councils, were elected, annually, by the free ſuffrage of the Burgeſſes, otherwiſe called the Honeſt Men of the Borough. { Leges Burgorum, cap. 77. Statuta Gildæ, cap. 33. 34.

Had this natural and liberal form of government remained inviolate, its hiſtory, it cannot be doubted, would have been marked by the moſt ſalutary conſequences. Unfortunately, however, it was diſcovered, that communities originally deſtined for commercial purpoſes, might be converted into inſtruments of political power; a diſcovery which was fatal to the freedom of the Boroughs. It very naturally occurred, that a numerous body of men in full poſſeſſion of liberty, and of thoſe elevated ſentiments which liberty inſpires, would not on every occaſion implicitly obey the voice of a Maſter. That extent of freedom, therefore, which the Boroughs formerly enjoyed, muſt be limited within narrower bounds. A few men muſt be elected, and to them the whole authority in

† Dr Gilb. Stuart. See his learned and acute Obſervations concerning the Public Law and Conſtitutional Hiſtory of Scotland.

in each Borough muſt be entirely committed. This accompliſhed, an engine of political power was conſtructed, which on every occaſion might receive its component parts as well as direction from the hand of the leading man in the neighbourhood.

Upon theſe principles, however illiberal and unjuſt, an act was paſſed in the Parliament of Scotland, in the year 1469, cap. 29. † touching the election of Officers in Boroughs, obtained in the minority of the reigning Prince, by the power of the Scottiſh Nobles. This ſtatute, long celebrated by the tyranny which it eſtabliſhed, deſtroyed at one blow the ancient and free conſtitution of the Royal Boroughs. It introduced a form of government for Boroughs which is equally adverſe to liberty and the public good; for while it provides, that no Officer or Council ſhall be continued longer than one year, it alſo enacts, that the old Council ſhall chuſe the new, and that the new and the old Council, together with the Deacons of the Crafts, ſhall annually chuſe all Officers pertaining to the town. The inductive cauſe of this pernicious ſtature is no novelty in the hiſtory of political government. The pretence of popular diſturbance has ever been employed to cut up the very principles of popular power. It is a curious maxim which deſpotiſm has invented, and upon which that ſpecies of government is ſupported, that the voice and actions of the people are ever hoſtile to their own happineſs, and to their own important and fundamental rights. But there are periods of ſociety in which deluſions the moſt fatal, and fictions the moſt incredible, acquire influence over the minds, and direct the conduct of men. Of this, the ſtatute 1469, and many other monuments of deſpotiſm, afford ample teſtimony.

It was the neceſſary operation of that arbitrary ſtatute, that the ancient conſtitution of the Royal Boroughs was fundamentally overturned, the freedom of the Burgeſſes invaded, and ſyſtems of government eſtabliſhed in the Boroughs of Scotland, which enabled men once in poſſeſſion of power to retain it for ever, by repeated re-elections of themſelves, or their friends and dependants.

The deprivation of the liberties of the Scottiſh Boroughs, introduced by this act of Parliament, was rendered ſtill more ſevere by another paſſed in the year 1474, cap. 56. becauſe, by the former act, the whole Council was to be annually changed, whereas the latter ordained that four perſons out of the old ſhould be choſen yearly to the new Council, whereby a portion of the power of the Council was *perpetually* entailed on the Burgeſſes, without their conſent or approbation.

By

† *Item*, Touching the election of Officiares in Burrowes, as Alderman, Baillies, and uther Officiares, becauſe of great contention aeirly for the chuſing of the famin, throw multitude and chamour of commounes ſimple perſons; it is thought expedident, that nae Officiares nor Councel be continued after the King's lawes of Burrowes, further than ane zeir, and that the chuſing of new Officiares be in this wiſe: That is to ſay, the auld Councel of the towne ſall chuſe the new Councel, in ſik number as accordis to the towne, and the new Councel, and the auld in the zear foreſaid, ſall chuſe all officiares perteening to the towne, as Alderman, Baillies, Deane of Gild, and other Officiares; and that ilk Craft ſall chuſe a perſon of the famin Craft, that ſall have veit in the ſaid election of Officiares, for the time in likewiſe zeir by zeir; and attour, it is thought expedient, that nae Captaine nor Conſtable of the King's Caſtelles, quhat towne that ever they be in, ſall beare office within the ſaid towne, as to Alderman, Baillie, Deane of Gild, Theſaurer, nor nane uther Officiare that may be choſen be the towne fra the time of the nixt chuſing fourth.

By another act of the Parliament of Scotland, in the year 1487, cap. 108. the act 1469, touching the election of officers in Boroughs, by which the Councils were appointed to be annually changed, was ratified and approved, and the election of Officers was directed to be made "*of the beſt and worthieſt indwellers of the town, and not 'by partiality nor maſterſhip.*" But the power of the Nobles defeated in theſe reſpects the execution of the ſtatutes.

Experience, however, having demonſtrated the pernicious effects of perpetuating the power of Officers in Boroughs, and of conferring that power on ſtrangers, a ſtatute was paſſed in the Parliament of Scotland, in the year 1503, cap. 80. which enacted, that all Officers having office of juriſdiction within Boroughs be changed yearly; and that none have juriſdiction within Borough, unleſs they uſe merchandize within the ſame. Of this ſtatute, it was the evident intention to diminiſh the influence of the Nobles now become equally oppreſſive to the Crown and the people, by procuring themſelves, their near relations and dependants, to be elected into the varions offices in Boroughs, whereby they engroſſed the whole power, and trampled on the freedom of the Boroughs, which formed the third eſtate of Parliament.

The regulations of theſe ſtatutes being ſtill found inſufficient to reſtrain the power of the Nobles, another act was made by the Parliament of Scotland in the year 1535, cap. 26. which, after narrating the evils ariſing through *outlandſmen* being choſen office-bearers in Boroughs, ordains, *That no man in time-coming be choſen Provoſt, Bailies, or Aldermen into Burgh, but they that are honeſt and ſubſtantial Burgeſſes, merchants, and indwellers of the ſaid Burgh, &c.*

This ſtatute proving likewiſe ineffectual to repreſs the power of the Nobles, a further attempt was made by another act paſſed in the Parliament of Scotland in the year 1609, cap. 8. which, after mentioning that the courſe intended for diſcharging *Noblemen and Gentlemen* to be elected Provoſts and Magiſtrates of Boroughs, had not taken effect, provides, *That in time-coming, no perſon ſhould be capable of Provoſtrie or other Magiſtracy within any Borough, but Merchants and Traffickers inhabiting within the ſaid Boroughs allenarly, and no others.*

Soon after James the Sixth of Scotland had mounted the Engliſh throne, by which he acquired an immenſe acceſſion of Crown influence, and more particularly, after the reſtoration of Charles the Second, the ſame abſolute authority over the Boroughs of Scotland, which had been formerly held by the Nobles, was ſeized on by the Crown, and was exerciſed in the moſt illegal and arbitrary manner.

Accordingly, one of the grievances ſpecially mentioned in the Claim of Rights, preſented by the eſtates of the Kingdom of Scotland to King William and Queen Mary,

Mary, on the 11th of April 1689, was the ſubverting by the abdicated family "*the* '*right of the Royal Boroughs, the third eſtate of Parliament, impoſing upon them not* '*only Magiſtrates, but alſo the whole Town Council and Clerks, contrary to their li-* '*berties and expreſs charters.*"

In purſuance of this Claim of Rights, one of the ſpecial articles of grievances preſented by the eſtates of the kingdom of Scotland to King William, on the 13th April 1689, is expreſſed in the following words: "*That the grievances of the Boroughs be* '*conſidered and redreſſed in the Parliament.*"

By the 22d act of the meeting of the eſtates of the kingdom of Scotland, dated 18th April 1689, the eſtates gave "*order and warrant for new elections to be made of ordi-* '*nary Magiſtrates and Town Councils for the ſeveral Royal Boroughs to be choſen by* '*the poll; and appointed the Magiſtrates and Town Councils ſo elected to continue until* '*the ordinary time of their election at or near Michaelmas then next.*"

From this ſhort deduction relative to the hiſtory and government of the Royal Boroughs, it appears, that their conſtitutions anciently were entirely free; that their liberty was invaded and deſtroyed by an arbitrary ſtatute in the year 1469; that from this period to the acceſſion of James the Sixth to the Crown of England, the Ariſtocracy of Scotland held the Boroughs in bondage; that from the *acceſſion* to the Revolution, and more particularly after the Reſtoration, the liberty of the Boroughs was trampled under foot by the abſolute power of the Crown; and that it was one of the great objects of the Claim of Rights, to redreſs the grievances and reſtore the freedom of the Boroughs.

But owing to the magnitude and importance of the other objects which then occupied the attention of the nation, or from other cauſes, the *radical and ſubſtantial Grievances* of the Boroughs were entirely overlooked; for although, by the act of the meeting of the eſtates of the kingdom of Scotland on the 18th April 1689, a power was conferred on the Burgeſſes by *one* poll election, to remove thoſe Councils, Magiſtrates and other Officers, who had been illegally impoſed by the arbitrary authority of the Crown; yet the original invaſion of their rights and liberties, introduced by the act 1469, whereby the old Councils were entitled to elect their ſucceſſors *in perpetuum*, was unfortunately continued unaltered and unrepealed.

By theſe means, after the Revolution, there ſucceeded to the unconſtitutional authority of the Nobles and to the influence of the Crown, a new ſpecies of government in the Royal Boroughs of Scotland, which, though attended with leſs dignity, was not leſs injurious and degrading to the Burgeſſes than either of the two former. This was the *perpetual* power of parties, or, as they are emphatically ſtyled, *Juntos* of men in Boroughs,

roughs, who having once obtained poſſeſſion of the offices of truſt and authority therein, have been enabled to retain them, often, during their lives, by virtue of the regulations of the act 1469, and to entail the ſame, like private eſtates, in their families, employing as the inſtruments of their power, their relations, connections, and dependants; and this ſpecies of Borough government, though equally diſgraceful and pernicious, has prevailed in Scotland from the Revolution down to the preſent day.

To the arbitrary and unconſtitutional enactments of the ſtatutes 1469 and 1474, the abuſes of time and the arts and influence, firſt of the Nobles, and afterwards of the Crown and the Juntos, have added other abſurdities and other encroachments on the rights and liberties of the Burgeſſes; for although, by the former of theſe ſtatutes, the whole Councils, and by the latter, certain parts of the Councils, were to be annually changed; and although, by the other laws which have been mentioned, frequent attempts were made to expell from Boroughs the power of ſtrangers,—it is yet a lamentable truth, that while the deſpotiſm of theſe two acts has remained in full vigour, almoſt every thing ſalutary in them and the other ſtatutes has been totally diſregarded.

Local uſages likewiſe deviating from the ſtatutes, and adverſe to the rights of the Burgeſſes, have eſtabliſhed inſtitutions, whereby the whole or almoſt the whole Councils are continued from year to year, re-electing themſelves without any change, and whereby, not only perſons thus ſelf-elected, but alſo perſons without reſidence, without property, without trade, without intereſt of any kind in Boroughs, may, for any length of time, enjoy the offices of Magiſtrates and Counſellors: And to theſe local inſtitutions created by uſage, in direct oppoſition to the inherent rights of the Burgeſſes, the deciſions of the Courts of Juſtice even in the laſt reſort have given the force and authority of laws.

Evident violations, therefore, of the liberties of the Boroughs, created by ſtatutes, and local inſtitutions conſiſting in nothing but abuſes and deviations from law and right, pervade, throughout, the government of Boroughs. Thoſe direct infringements of liberty, and theſe gradual corruptions of time and of uſage, now matured into ſyſtems, compoſe thoſe partial and abſurd eſtabliſhments in Boroughs, which have become not only the ſubjects of the beſt founded complaints, but alſo the objects of the higheſt reproach. They are only veiled and protected by a popular name, for they are called the *Conſtitutions* of the Royal Boroughs of Scotland. But the Burgeſſes derive confidence from the reflection, that they are now to preſent their appeal before a Tribunal whoſe penetration directed to the real nature and effects of the ſyſtems, will not ſuffer itſelf to be miſled by the gloſſes of names, or the partial and illuſive repreſentations of intereſted men.

The pernicious conſequences of theſe unjuſt and illiberal ſyſtems have not only affected the liberty and political government of Boroughs: Their baneful influence has alſo extended

tended to every branch of the adminiſtration, and has contributed to prevent or render fruitleſs the execution of ſtatutes made for the very protection of the revenues of Boroughs.

An Act of the Parliament of Scotland, in the year 1535, cap. 26. ordained, "*That all Provoſts, Bailies, and Aldermen of Boroughs, bring yearly to the Chequer, at the day ſet for giving of their accounts, their account books of their common goods, to be ſeen and conſidered by the Lords Auditors, if the ſame be ſpended for the common weal of the Borough*, or not," &c. And this ſtatute is enforced with additional regulations by another Act of the Parliament of Scotland, paſſed in the year 1693, c. 28. But owing in a great meaſure to the pernicious ſyſtems of Borough Government that have been deſcribed, by which the power of perſons liable to account was rendered perpetual, the remedy provided by theſe well intended ſtatutes has, after the experience of centuries, proved inadequate and totally ineffectual; for the Boroughs have been reduced to poverty and diſtreſs by groſs miſapplications and dilapidations of their properties and revenues, and by enormous contractions of debt.

Impreſſed as the Burgeſſes are with the warmeſt attachment to the conſtitution of their common country, and to the perſon and family of their Sovereign, it is with deep regret, but with a lively hope of obtaining redreſs of their grievances, that they find themſelves under the neceſſity of approaching the Legiſlature in the language of complaint. In conveying their ſentiments on ſubjects ſo important, they have deemed it incumbent on them, and becoming the dignity and wiſdom of Parliament, to ſupport their aſſertions by authorities derived from the indiſputable evidence of ſtatutes, the conſtitutions of their Boroughs, or notorious uſage. From theſe authorities, they conceive themſelves entitled to affirm, and to repreſent to the world and in Parliament, inveſted, as it is, with a conſtitutional power of affording redreſs, that in the circumſtances which have been mentioned, the Burgeſſes of the Royal Boroughs of Scotland labour under very great and intolerable grievances: For, to be deprived, as they are, of the exerciſe of their natural ancient and inherent right of electing the adminiſtrators of the common property and other affairs of the Boroughs, of which they form a conſiderable and eſſential part, they declare to be an unconſtitutional and intolerable grievance, inconſiſtent with their juſt liberties, the intereſt of their Incorporations, and the public good.

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The Burgeſſes rely with the firmeſt confidence on the wiſdom and juſtice of Parliament, that for this very deep and intolerable grievance, they ſhall receive that redreſs which its nature and evil tendency ſo loudly demand, and which it is natural for them to expect from the ſpirit and liberality of men whom elevated and hereditary rank, or popular choice, has marked out as the framers of laws, and the protectors of public liberty.